FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1937

No. 511

THE NEW NEGRO ALLIANCE, A CORPORATION, ET AL.,
Petitioners,

v.

SANITARY GROCERY COMPANY, INC., A CORPORATION,
Respondent

BRIEF FOR RESPONDENT

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v.

Sanitary Grocery Company, Inc., a Corporation,
Respondent

BRIEF FOR RESPONDENT

STATEMENT OF CASE

This case is before the Court on a Writ of Certiorari to the United States Court of Appeals for the District of Columbia, which, by its judgment entered on July 26, 1937 (Record, page 23), 92 F. (2d) 510, 65 W. L. R. 874, affirmed the issuance of an injunction entered by the District Court of the United States for the District of Columbia restraining the petitioners herein from picketing and boycotting retail grocery stores owned and operated by the respondent.

The Appellate Court in its opinion clearly and concisely stated the question of law and facts involved herein as follows:

"This appeal is from a final order and decree of the District Court of the United States for the District of Columbia,

permanently enjoining The New Negro Alliance, a corporation, and two of its officers, William H. Hastie and Harry A. Honesty, from picketing or boycotting retail grocery stores of the appellee, Sanitary Grocery Company, Inc. The case was finally disposed of on bill and answer.

"The appellee is a corporation operating a large number of retail grocery stores in the District of Columbia. Appellant The New Negro Alliance is a corporation composed of colored persons, its objects being the mutual improvement of its members and the promotion of civic, educational, benevolent and charitable enterprises. The individual appellants are the administrator and deputy administrator of The New Negro Alliance.

"The single question here involved in whether appellants, who admit that the relation of employer and employee does not exist between them and the appellee, and that they are not engaged in any competitive business with the appellee, have a legal right to picket and boycott the stores of the appellee for the purpose of compelling it to engage and employ colored persons in the sales positions connected with the operation of its business.

"The court below entered a decree restraining the appellants from picketing or boycotting or by inducements or threats or intimidation or the use of physical force from preventing or hindering persons who desire or intend to enter the place of business of appellee from entering and transacting business with appellee. The bill charges that the appellants had made arbitrary and summary demands that appellee engage and employ colored persons in managerial and sales positions in its store and had written letters to appellee which contained threats or boycotting and ruination of appellee's business and that upon the refusal of appellee to comply appellants, their members, representatives, etc., had unlawfully conspired to picket, patrol, boycott and ruin appellee's business. Specific acts are alleged as follows: Picketing in front of the store with signs containing the words 'Do Your Part! Buy Where You Can

Work! No Negroes Employed Here'; that these pickets had jostled and collided with persons in front of the store and physically hindered, obstructed and interfered with persons desiring to enter appellee's place of business; that the pickets are disorderly while picketing and attract crowds and when crowds are attracted encourage them to prevent persons from entering appellee's place of business; that appellants in concert have induced to be published in Washington Negro newspapers notices to the effect that appellee 'Is Firing Negro Personnel—Organization Plans to Picket Unless Demands Are Met,' and again, 'Sanitary Store Picketed by Alliance for Refusal to Employ Negro Clerks,' and again, 'Housewives Being Canvassed by Group Buy-Where-You-Can-Work Campaign Carried to Residents in Neighborhood'; and again, 'that the Alliance is conducting a house-to-house canvass in the vicinity of the new store and residents in the neighborhood are urged to "buy where you can work."'

"The answer denies the conspiracy charged and likewise denies physical coercion or intimidation, and admits that the relation of employer and employee does not exist and likewise admits that the parties are not engaged in competitive business."

ARGUMENT

The Court Below Properly Held That the Matter in Controversy Herein Was Not Comprehended by the Labor Disputes Act of March 23, 1932

No labor dispute is involved herein. The question in the instant case has been raised in only three reported cases and all have been determined to be *racial disputes* and injunctions granted and sustained.

The petitioner corporation is not a labor union or organization, but in fact was incorporated under the laws of the District of Columbia as a social organization (R., pp. 2, 13).

The first decided case on the question was that of *Green*

v. *Samuelson*, 168 Md. 421, 178 Atl. 109, decided April 2, 1935. This case involved the picketing of stores in a colored section of Baltimore, Md., by an organization of negroes, similar to the petitioner corporation herein, and the Court of Appeals of Maryland, in deciding the case, said in part:

> "So far as we are able to ascertain, this is the first time the question here presented has arisen in an appellate court, and our information is that the case in the court appealed from is the first time it has been presented to any tribunal. About a month after the bill was filed in the circuit court for Baltimore City a similar bill was filed in New York, *Beck Shoe Corporation* v. *Johnson*, 153 Misc. 363, 274 N. Y. S. 946, and both chancellors declined to regard the question as a labor dispute, and, on the ground of public policy, granted the relief prayed by the bills for injunction. They have already excited some attention as will appear from 83 Pa. Law Rev. 381, and 48 Harvard Law Rev. 691."

In the *Green case* there was "no evidence of physical violence and/or disturbance of the peace," and the answer filed in that case set out:

> "And denying that they 'Coerced, intimidated or forced' storekeepers in the immediate neighborhood of the plaintiffs to 'discharge white employees and to hire in their stead negro employees.'"

which is substantially the same answer made by the petitioners herein (Record, p. 14). The Maryland Court, however, held:

> "The defendants contend that this case is, or is akin to, a labor dispute, because their purpose is to secure employment for members of their race and thus improve its condition and that it has such a justifiable cause as to warrant their actions in enforcing their demands by the methods commonly called 'picketing.' *International Pocketbook Workers* v. *Orlove*, 158 Md. 496, 148 A. 826. They disclaim any intention or pur-

post of depriving the plaintiffs' employees of their positions or livelihood, yet, if successful, their activities could have no other result. It is not denied that there is no quarrel or dispute between employers and employees and none between the defendants and those employees. Their grievance is that the defendant merchants depend almost wholly on colored patronage for their existence and that these merchants do nothing for them in return. That there is some merit in their complaint cannot be disputed, as the planting of a white store in an exclusively colored community is an exploitation of the inhabitants for profit, but the defendants cannot right their wrongs by means that are unlawful. The defendants and others of their race have a perfect right to buy where they please. Nor is there anything 'unlawful in the action of a combination who by concerted action cease to patronize a person against whom a concert of action is directed when they consider it is to their interest to do so.' 12 C. J.; Code, Art. 27, 43. * * *

"(3) The defendants do not contend that this is a labor dispute as commonly recognized, but, to justify their actions in instituting a boycott carried on by picketing, they invoke the rules applied to such disputes. There is no question here involved of hours, wages, working conditions, or the right to organize. Whatever of organization there is is made up of colored men and women of various professions, occupations, and callings, to promote the interests of the colored race generally by obtaining employment for its people. The general purpose of colored persons to improve their race may not be improper, but they must adopt lawful means to accomplish this end, and must not resort to intimidation and threats which may easily lead to breach of the peace and physical violence. As said in *My Maryland Lodge* v. *Adt*, 100 Md. 238, 249, 59 A. 721, 723, 68 L. R. A. 752: 'They have an unquestionable right to present their cause to the public in newspapers or circulars in a peaceable way, but with no attempt at coercion. If ruin to the employer results from their peaceable assertion of these rights, it is a damage without remedy. But the law does not permit either employer or employee to use force, violence,

threats of force or threats of violence, intimidation, or coercion.'

"They may, by organization, public meetings, propaganda, and by personal solicitation, persuade white employers to engage colored employees and to induce their people to confine their trade to those who accede to their wishes, and whether they succeed or fail will depend on the co-operation of their people.

"(4, 5) The complaint here is not with the thing intended to be done, but with the means employed to do it. The case immediately before us is the effort of a race to improve its condition in a section of a large city inhabited almost exclusively by one race, and no way has been pointed out to us, and we know of none, whereby the courts can make a rule to apply to the conditions there existing which would not be applicable where the same racial conditions do not exist. If we say what was being done in the seventeen hundred block on Pennsylvania Avenue in Baltimore was proper, then it can be done in any other block in the city; there cannot be one law for Pennsylvania Avenue and another for streets where the white races predominate and trade, and the courts, in laying down a rule of conduct, must not only consider what has been done but what may be done in consequence of it.

"*In our opinion, this is a racial or social question, and as such, the rules heretofore announced and applied to labor disputes have no application, and the things complained of were properly enjoined* • • • •" (Italics ours.)

The second reported case is that of *Beck-Hazard Shoe Corp.* v. *Johnson*, 274 N. Y. Supp 946, 153 Misc. 363, decided October 31, 1934, in which the Court said in part:

"This is an application for an injunction pendente lite to prevent picketing. The case is one of novel impression in this state. So far as research on the part of counsel and the Court has disclosed, the matter has never before been passed upon in the United States or England except in the circuit court of Baltimore City. *Samuelson* v. *Green* (not reported; opinion appearing in full in the Daily Record, Baltimore, May 26, 1934).

"In a section of New York City, known as Harlem, there is a large community of negroes. One of the main business thoroughfares of this community is 125th Street. The plaintiff corporation conducts a retail business in a store at 264 West 125th Street. The defendant Citizens' League for Fair Play is an unincorporated association composed of negroes in this community.

"(1) Prior to September 10, 1934, the Citizens' League for Fair Play appointed certain individuals as its so-called picket committee. Apparently the purpose of the committee was to induce storekeepers doing business within this section to employ a certain percentage of negro help. It is not clear from the affidavits whether any picketing such as that hereinafter described was actually done prior to September 10, 1934. On September 10, 1934, the Citizens' League for Fair Play, at a meeting of the association, decided to discontinue the activities of this committee and to revoke its authority. This was done. * * *"

"* * * On September 21, 1934, the defendants began to picket in front of the plaintiff's store. The banners carried by the pickets contained inscriptions substantially in the following form: 'A. S. Beck does not employ 50 per cent. negroes. Stay out. Do not buy here.' 'An Appeal. Why spend your money where you can't work? This is foolish. Stay out. Citizens League for Fair Play.' 'An Appeal. Don't buy from this store. Negro serving here is a porter not a clerk. Stay out. Citizens League for Fair Play.'"

"* * * (6) The controversy here is not a labor dispute. The defendants do not constitute a labor union or a labor organization of any kind. They do not compose, nor are they all members, of any single trade or class of trades. Their demands are not connected with any one industry. The questions about which they are now picketing have no connection with wages, hours of labor, unionization, or betterment of working conditions.

"It is solely a racial dispute. It is born of an understandable desire on the part of some of the negroes in this community that the stores in their neighborhood where they spend their money should employ a per-

centage of negro help. Their exclusive concern is that a certain number of white persons be discharged in order to make place for members of their own race.

"The papers on this motion indicate that there is no unanimity of opinion among the negro leaders themselves as to the wisdom of this course of conduct. Editorial comment from a popular and prominent newspaper published in this community by negroes and read by negroes principally has been submitted to the Court, indicating opposition to the activities of the defendants. The Citizens' League for Fair Play is apparently now also out of sympathy with them.

"The Court must take into consideration the ends to be accomplished and the means here adopted by these defendants. Assuming that the means were peaceful and were devoid of misrepresentation, disorder, or violence, the Court is still of the opinion that the purpose sought does not justify the means used, and that injunctive relief is warranted. The acts of the defendants are irreparably injuring the plaintiff's business. Not only do they tend to keep prospective colored customers out of the store of the plaintiff, but they must necessarily have the effect of keeping out prospective white customers also. The purpose of the defendants in having members of one race discharged in order to employ the members of another race will not justify this direct damage to the plaintiff in the conduct of its business.

"It is not analogous to a situation where one labor union is in conflict with another and carries on picketing to obtain preference for its own members over those of the other union. Such instances are found in cases like *J. H. & S. Theatres* v. *Fay,* 260 N. Y. 315, 183 N. E. 509; *Stillwell Theatre* v. *Kaplan,* 259 N. Y. 405, 182 N. E. 63, 84 A. L. R. 6; *Nann* v. *Raimist,* 255 N. Y. 307, 174 N. E. 690, 73 A. L. R. 669. Justification exists for conflict between rival unions, even though the innocent employer is willing to deal collectively with either or both, in the claim by one union that the policy of its rival is hostile to the interests of organized labor. Cardozo, C. J., in *Nann* v. *Raimist, supra,* laid down this principle as follows (page 314 of 255 N. Y., 174 N. E. 690, 693):

"'The remedy is not lost because the controversy is one between the members of rival unions, and not, as happens oftener, between unions and employers. *Tracey* v. *Osborne*, 226 Mass. 25 (114 N. E. 959); *Goyette* v. *Watson Co.*, 245 Mass. 577 (140 N. E. 285). On the other hand, the legality of the defendant's conduct is not affected by the fact that no strike is in progress in any of the plaintiff's shops. *Exchange Bakery & Restaurant, Inc.*, v. *Rifkin*. 245 N. Y. 260 (157 N. E. 130). If the defendant (union) believes in good faith that the policy pursued by the plaintiff (union) and by the shops united with the plaintiff is hostile to the interests of organized labor, and is likely, if not suppressed, to lower the standards of living for workers in the trade, it has the privilege by the pressure of notoriety and persuasion to bring its own policy to triumph. *Exchange Bakery & Restaurant, Inc.*, v. *Rifkin, supra; Bossert* v. *Dhuy*, 221 N. Y. 342 (117 N. E. 582, Ann. Cas. 1918D, 661).'

"In the present case no claim is made that any interests of organized labor are involved. It is purely a dispute of one race as opposed to another.

"*The acts here shown are also contrary to a sound public policy. If they were permitted and if they succeeded in their purpose, it would then become equally proper for some organization composed of white persons to picket the premises, insisting that all negro employees be discharged and that white employees be re-employed. If they were permitted, there is substantial danger that race riots and race reprisals might result in this and other communities. They would serve as precedent for similar activity in the interest of various racial or religious groups. The effect upon the social well-being of communities throughout the state would be far reaching.*" (Italics ours.)

"There is no precedent to warrant the use of this concerted action to the injury of this plaintiff for the purposes indicated. A balancing of advantages to the defendants as against the disadvantages to this plaintiff and to the social order as a whole, clearly points to disapproval of the acts complained of. *As*

a matter of principle, based upon a sound public policy, the Court cannot lend its assistance to this movement. It must protect not only this plaintiff but the community as a whole, from the dangers which exist in continued activity along these lines." (Italics ours.)

"* * * The motion for preliminary injunction is granted. Settle order."

The petitioners herein have based their right to be heard before this Court on the ground that there has been no proper construction, interpretation and application of the Norris-LaGuardia Disputes Act as to picketing by an association similar to petitioners; consequently the opinion of the trial court in the instant case and the opinion of the United States Court of Appeals of the District of Columbia which analyze the question are set forth in full as completing the judicial history of reported decisions in cases involving picketing by racial organizations.

The opinion in the District Court of the United States for the District of Columbia (Record, p. 16), 64 Wash. Law Rep. 627, held:

"The question presented is one of considerable importance. For a long time we have faced a sort of warfare between groups that operate industry, between those who have the ownership of the business, and those who labor in industry Argument among themselves and struggle and contest among them are still going on. Strikes, boycotts, picketing, lockouts and blacklists have been weapons of this industrial warfare. This situation has resulted in many laws being passed designed to aid peace and order in this most disturbed part of the social life of the country.

"Here it is suggested that it is proper and lawful for this kind of contest to be adopted by other groups not directly interested in any way in the industry or business itself.

"There are three sources of many of the disorders that have existed in the world for centuries. One has been sectionalism. Different parts of a country may

have prejudices against each other; and the same situation may exist between neighboring states."

"Another has been religious prejudice. Countless difficulties have arisen among religious groups.

"Another source of difficulty lies in racial prejudices. Not necessarily different races, but also among groups of different descent, such as Germans and Frenchmen, Jews and Gentiles.

"These prejudices arising out of sectionalism, religion and race have given rise to all kinds of misfortunes and disasters, revolutions and many of the evils that nations have had to deal with.

"Fortunately for us in this country, for a long time we have been able to get along in an orderly way so far as sectional, religious and race prejudices are concerned. We have been able to get along very peaceably and harmoniously.

"As suggested to counsel this morning, let us take one of our neighbors who lives out at Takoma Park, for instance, a Seventh Day Adventist, who runs a shop and business out there, and prefers to employ men of his own denomination. He uses his right to employ whom he pleases. His contract is between him and his employee. Now, suppose the Methodists in the neighborhood form an organization and say, 'We are going to boycott you unless you agree to employ our people in your shop instead of your own. We will close up your business. We will march our pickets up and down before your shop and tell people not to have anything to do with you.'

"We can at once see that that would engender a great storm center in the neighborhood, of prejudice and trouble likely to lead to disturbance and conflict, and therefore it would be of vital concern to the public.

"Let such a scheme be carried out by religious denominations with interference in and coercion through picketing of individual business generally and what a great zone of disturbance and difficulty would be created.

"The same in the case of sectionalism. We do not have much of that left in this country, but we used to have a lot of it; and we might find in this city, for example, many people from the South who could band

together and say, 'We are going to make every business man in this city employ nobody but Southern people. We will picket and boycott every place of every man unless he agrees to hire Southern people.'

"What would be the inevitable result of such combinations of people to coerce others in matters with respect to which they have no right to interfere?

"It is the same with races. Should the white people say to the man who employs colored help in his shop, 'You must put white men in there,' and put pickets out to parade up and down to see that these colored employees are turned out and white people are employed in their place?

"If we reverse that illustration, and suppose that a group of colored men say, 'We are going to picket and to boycott you unless you turn out your white employees or unless you cease hiring them and employ colored people,' that can only tend to lead to the same kind of trouble, the same kind of race disturbances, difficulties and disasters. It seems to me it is clearly along the wrong line—such combinations of people that are trying to interfere by coercion with the business of somebody else.

"Of course nobody can make somebody else deal with him. Everybody has a right to deal where he pleases. He does not have to deal with a man for any reason. He may not like his eyes or his clothes or his name or his race. That is his business.

"But it is a different thing when combinations are formed for the purposes of coercing people as to how they shall operate their business.

"So I think it would be very unfortunate if this zone of trouble should be extended from the economic zone in which we are already having so much trouble, into the sectional or religious or racial zones.

"I do not believe that the laws that relate to labor disputes have any application to this case. I do not think there is any analogy between the zones. They are entirely separate fields; and for that reason I think that not only does the law not apply, but the citations of authorities that have been made with respect to labor controversies have no analogy here. We must all work for better advancement all along the line. That can-

not be achieved through any particular group of this kind trying to impose restraints or to interfere by coercion in the conduct of the business of other citizens.

"I think the injunction ought to be granted in this case, and I will sustain the bill on the authority of the *King case* (266 Fed. 257, 260), and the *Beck case* (42 L. R. A. 407). You can, of course, take the case to the Court of Appeals. It may be well to have that court's view in this case to help us all have a clearer conception of just what the rights and duties of citizens are with respect to matters of this kind."

On appeal to the United States Court of Appeals for the District of Columbia the injunction entered by the trial court was affirmed by the following opinion (*The New Negro Alliance* v. *Sanitary Grocery Co.*, R. p. 23, 92 F. (2d) 510, 65 W. L. R. 874):

"This appeal is from a final order and decree of the District Court of the United States for the District of Columbia, permanently enjoining The New Negro Alliance, a corporation, and two of its officers, William H. Hastie and Harry A. Honesty, from picketing or boycotting retail grocery stores of the appellee, Sanitary Grocery Company, Inc. The case was finally disposed of on bill and answer.

"The appellee is a corporation operating a large number of retail grocery stores in the District of Columbia. Appellant The New Negro Alliance is a corporation composed of colored persons, its objects being the mutual improvement of its members and the promotion of civic, educational, benevolent and charitable enterprises. The individual appellants are the administrator and deputy administrator of The New Negro Alliance.

"The single question here involved is whether appellants, who admit that the relation of employer and employee does not exist between them and the appellee, and that they are not engaged in any competitive business with the appellee, have a legal right to picket and boycott the stores of the appellee for the purpose of compelling it to engage and employ colored persons in

the sales positions connected with the operation of its business.

"The court below entered a decree restraining the appellants from picketing or boycotting or by inducements or threats or intimidation or the use of physical force from preventing or hindering persons who desire or intend to enter the place of business of appellee from entering and transacting business with appellee. The bill charges that the appellants had made arbitrary and summary demands that appellee engage and employ colored persons in managerial and sales positions in its store and had written letters to appellee which contained threats of boycotting and ruination of appellee's business and that upon the refusal of appellee to comply appellants, their members, representatives, etc., had unlawfully conspired to picket, patrol, boycott and ruin appellee's business. Specific acts are alleged as follows: Picketing in front of the store with signs containing the words 'Do Your Part! Buy Where You Can Work! No Negroes Employed Here'; that these pickets had jostled and collided with persons in front of the store and physically hindered, obstructed and interfered with persons desiring to enter appellee's place of business; that the pickets are disorderly while picketing and attract crowds and when crowds are attracted encourage them to prevent persons from entering appellee's place of business; that appellants in concert have induced to be published in Washington Negro newspapers notices to the effect that appellee 'Is Firing Negro Personnel—Organization Plans to Picket Unless Demands Are Met,' and again, 'Sanitary Store Picketed by Alliance for Refusal to Employ Negro Clerks,' and again, 'Housewives Being Canvassed by Group Buy-Where-You-Can-Work Campaign Carried to Residents in Neighborhood'; and again, 'that the Alliance is conducting a house-to-house canvass in the vicinity of the new store and residents in the neighborhood are urged to "buy where you can work."'

"The answer denies the conspiracy charged and likewise denies physical coercion or intimidation, and admits that the relation of employer and employee does

not exist and likewise admits that the parties are not engaged in competitive business.

"Appellants' appeal in this Court is grounded on their claim that peaceful picketing is not illegal.

"The legislatures and the courts have gone far in sustaining peaceful picketing where labor disputes are involved. By the rather sweeping Act of March 23, 1932 (47 Stat. 70, Secs. 101-115, T. 29, U. S. C.), the Congress prohibited the federal courts from restraining peaceful picketing in cases involving 'labor disputes.'

"Sec. 13 of the Act (Sec. 113, T. 29, U. S. C.) defines 'labor disputes,' as comprehended within the terms of the Act, as follows:

> "'(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined.)
>
> "'(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"'(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.'

"We agree with the trial court that the instant controversy does not involve a labor dispute within the statute. In this view the distinction between pickets attempting by verbal persuasion to interfere with the business of and to prevent dealing with the establishment boycotted, and pickets silently displaying cards bearing inscriptions intended to accomplish the same object, is of little importance, since both constitute an interference not only with the business boycotted but with the public use of the street. Its purpose in either case when induced by concerted action on the part of a great mass of people is so to interfere with the business of appellee as to compel it to surrender its free right to choose its employees and to conduct its business in whatever lawful manner it may elect. These are rights of which it cannot be deprived under the facts and circumstances here disclosed.

"The tendency of the picketing and the action taken to make it effective disclosed in this case is to deter peaceful citizens, both men and women, from entering the appellee's place of business, and to deprive them of their lawful rights. To say under such circumstances that the picket consists of nothing more than a peaceful endeavor to prevent customers from entering the boycotted place is to make a statement at variance with the facts. *Cf. Truax* v. *Corrigan*, 257 U. S. 312.

"With the admission of appellants that there is no relation of employer and employee existing, and that appellants are not engaged in a competitive business with appellee, the case narrows down to whether or not appellants come within sub-paragraph (c) of the above-quoted statute, and in conducting this picketing are attempting to negotiate, fix, maintain, change or

arrange terms or conditions of employment. As we have said, we think that the statute will not admit of so broad a construction. Every person conducting a legitimate business is entitled to select his own employees. When employees are selected and become engaged in the business, then any differences which may arise between the employer and employee, or any organization in which the employee may be a member, may come within the provisions of the statute, but until such relation becomes established no ground exists for what may be called a labor dispute. If appellants are upheld in picketing in this case, they might picket any private residence which employed white rather than negro servants. The illustration indicates the extreme to which the contention of the appellants, if upheld, might be carried.

"We are clearly of the opinion that this is not a labor dispute. It is a racial dispute in which appellants have admittedly confederated together to impose on appellee definite terms in the employment of its help. In *A. S. Beck Shoe Corporation* v. *Johnson*, 274 N. Y. S. 946, an association of negroes picketed stores of the shoe corporation, bearing signs reading, 'An Appeal. Why spend your money where you can't work? This is foolish. Stay out. Citizens League for Fair Play.' These signs were similar to the placards carried by the pickets in the instant case. The court in that case said:

> " 'The controversy here is not a labor dispute. The defendants do not constitute a labor union or a labor organization of any kind. They do not compose, nor are they all members, of any single trade or class of trades. Their demands are not connected with any one industry. The questions about which they are now picketing have no connection with wages, hours of labor, unionization, or betterment of working conditions.
>
> " 'It is solely a racial dispute. It is born of an understandable desire on the part of some of the negroes in this community that the stores in their neighborhood where they spend their money should employ a percentage of negro help. Their exclusive

concern is that a certain number of white persons be discharged in order to make place for members of their own race.

"'* * * * The acts of the defendants are irreparably injuring the plaintiff's business. Not only do they tend to keep prospective colored customers out of the store of the plaintiff, but they must necessarily have the effect of keeping out prospective white customers also. The purpose of the defendants in having members of one race discharged in order to employ the members of another race will not justify this direct damage to the plaintiff in the conduct of its business.'

"The court in that case was considering a situation identical with that here presented, and the reasoning of the court in its opinion we regard as sound.

"In a case analogous to the instant case, *Green* v. *Samuelson*, 168 Md. 421, there was involved the picketing of stores in a colored section of the City of Baltimore by an organization of negroes similar to the appellant corporation. In that case the Court of Appeals of Maryland, in upholding the issuance of an injunction, said (pp. 425-6, 429):

"'So far as we are able to ascertain, this is the first time the question here presented has arisen in an appellate court, and our information is that the case in the court appealed from is the first time it has been presented to any tribunal. About a month after the bill was filed in the Circuit Court of Baltimore City a similar bill was filed in New York (*Beck Shoe Corporation* v. *Johnson*, 153 Misc. 363, 274 N. Y. S. 946), and both chancellors declined to regard the question as a labor dispute, and, on the ground of public policy, granted the relief prayed by the bills for injunction.

* * * * * * *

"'In our opinion, this is a racial or social question, and as such, the rules heretofore announced and applied to labor disputes have no application, and the things complained of were properly enjoined. * * *'"

"However commendable the purposes of the appellants may be in attempting to improve the condition of their race, they are not, in carrying out such purposes, justified in ignoring the rights of the public and the property rights of the owner of the business which they attempt to boycott. To sustain such action on the part of an organization established merely to advance the social standing of its race would be in complete disregard of fundamental principles of public policy, and cannot be supported upon any principle of law, equity or justice.

"The decree is affirmed."

It will be found from the reading of the following separate opinion of Mr. Justice Stevens, dissenting in part but concurring in the affirmance of the injunction, that the court was unanimous in holding this to be a *racial and not a labor dispute.*

"I dissent from the dictum of the majority that no labor dispute exists within the meaning of the Norris-LaGuardia Act (47 Stat. 70) until differences arise between the employer and the employee or any organization in which the employee may be a member. *Cinderalla Theatre Co.* v. *Sign Writers' Local Union,* 6 F. Supp. 164; *Dean* v. *Mayo,* 8 F. Supp. 73; *cf. Levering & Garrigues Co.* v. *Morrin,* 71 F. (2d) 284, certiorari denied 293 U. S. 595; see Legislation Note, *The Norris-LaGuardia Act; Cases Involving or Growing Out of a Labor Dispute* (1937), 50 Harv. L. Rev. 1295. The dictum would exclude from the operation of the Norris-LaGuardia Act a dispute between two unions as to the right to represent employees, the employer being indifferent as to the result, and would also exclude from the operation of the Act a dispute as to unionization between a union and an employer of exclusively non-union labor. Neither of such types of disputes is involved in the instant case, and we should therefore not even in dictum rule concerning them.

"I dissent from the affirmance of that part of the decree which as worded enjoins the appellants from boycotting the appellee. I think it was erroneous for

the trial court in effect to order the appellants to trade at the appellee's store.

I concur with the majority in the conclusion that in the instant case the Norris-LaGuardia Act does not prevent the issuance of an injunction. The dispute in the instant case is not, I think, a labor dispute within the definition given to that phrase in the Norris-LaGuardia Act—even under the most liberal construction of that Act. *E.g., Cinderella Theater Co.* v. *Sign Writers' Local Union, Dean* v. *Mayo, Levering & Garrigues Co.* v. *Morrin*, all *supra*. See Legislation Note, *supra*, 1301 n. 32. Therefore the trial court had jurisdiction to issue an injunction.

"I feel bound to concur further with the majority in the conclusion that in the instant case the injunction was properly issued. I do so with reluctance for I think courts should be cautious indeed in limiting application of the general proposition so happily stated by Justice Hofstadter, in *Julie Baking Co.* v. *Graymond*, 152 Misc. 846, 274 N. Y. Supp. 250:

> " 'The right of an individual or group of individuals to protest in a peaceable manner against injustice or oppression, actual or merely fancied, is one to be cherished and not to be proscribed in any well-ordered society. It is an essential prerogative of free men living under democratic institutions. And it is salutary for the state, in that it serves as a safety valve in times of stress and strain. * * *' [152 Misc. at 847; 274 N. Y. Supp. at 251-252.]

"But this proposition was uttered in a case which though it did not involve a labor dispute also did not involve a racial dispute. It was a dispute between a neighborhood organization and a bakery concerning alleged extortionate prices.

"How far a right may be exercised, or how far it is proper to limit its exercise, is a question of policy and one which, however delicate, must nevertheless be determined by courts according to their best judgment—in the absence of some controlling statute. The questions of policy involved in picketing in labor disputes have been thought by Congress, in the Norris-

LaGuardia Act, and by many courts, to operate against restraint of peaceful picketing.* Peaceful picketing has been recognized as legal, however, not upon the theory that it is not an invasion of another's right but upon the theory that is is a justifiable invasion. As said by Mr. Justice Holmes in *Aikens* v. *Wisconsin*, 195 U. S. 194, 204:

> "'* * * prima facie, the intentional infliction of temporal damage is a cause of action, which, as a matter of substantive law * * * requires a justification if the defendant is to escape.'

"And, as said the same author in *Privilege, Malice, and Intent* (1894), 8 Harv. L. Rev. 1, 9:

> "'* * * when a responsible defendant seeks to escape from liability for an act which he had notice was likely to cause temporal damage to another, and which has caused such damage in fact, he must show a justification. The most important justification is a claim of privilege. In order to pass upon that claim, it is not enough to consider the nature of the damage, and the effect of the act, and to compare them. Often the precise nature of the act and its circumstances must be examined. It is not enough, for instance, it say that the defendant induced the public, or a part of them, not to deal with the plaintiff. * * * in all such cases the ground of decision is policy; and the advantages to the community, on the one side and the other, are the only matters really entitled to be weighed. * * *'

"The problem of policy has also been well put thus:

> "'The truth to be dealt with is that every measure upon which a labor union relies for acceptance of its

* The Norris-LaGuardia Act denies jurisdiction to enjoin "Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence." 47 Stat. 71. And see the following decisions: *Senn* v. *Tile Layers' Protective Union*, U. S. Sup. Ct. (May 24, 1937), 4 U. S. L. Week 1211; *Iron Molders' Union* v. *Allis-Chalmers Co.*, 166 Fed. 45; *Exchange Bakery & Restaurant, Inc.*, v. *Rifkin*, 245 N. Y. 260, 157 N. E. 130.

demands, involves the curtailment of some temporal interest of employer, non-union employee, and frequently the public. * * *

* * * * * * * *

" 'The damage inflicted by combative measures of a union—the strike, the boycott, the picket—must win immunity by its purpose. But neither this nor any formula will save courts the painful necessity of deciding whether, in a given conflict, privilege has been overstepped. The broad questions of law—what are permissible purposes and instruments for damage,—and the intricate issues of fact to which they must be applied, together constitute the area of judicial discretion within which diversity of opinion finds ample scope. * * *' [*Frankfurter and Greene: The Labor Injunction* (1930), at 24, 25.]

"One of the main factors of policy which must be weighed in judicial determination of whether an injunction shall issue to restrain picketing is the probability of violence in the particular circumstances involved. The decisions legitimatizing peaceful picketing in labor disputes have been based in part upon the proposition that picketing can be carried on in such manner as not imminently to endanger the public peace and safety, and in part upon the further proposition that the likelihood of violence in picketing in labor disputes is not sufficient to overweigh the public interest in picketing as one means of accomplishing improvement of labor conditions. In the instant case, the factor of the likelihood of violence operates I think to require an opposite conclusion. The dispute here is in essence and emphasis not a labor dispute but a racial dispute. True, it is a racial dispute concerning hiring, and has thus in a board sense to do with a question of labor; but this does not make it less racial in essence and in insistence. Violence in racial disputes is, as a matter of common knowledge, highly probable. Therefore, as a matter of public policy, picketing in such disputes cannot be justified, even though in its inception, as in the instant case, it is actually peaceful."

The relationship of employer and employee must exist, or a dispute must grow out of that relationship before the Labor Disputes Act of March 23, 1932, 47 Stat. 70, has application.

In *United Electric Coal Companies* v. *Rice et al.*, 80 Fed. (2d) 1, certiorari denied 297 U. S. 714, the Court in determining whether or not the Labor Disputes Act of March 23, 1932, prohibited the issuance of an injunction where the dispute was between two rival labor unions, used the following language in holding that the relationship of employer and employee must exist before the act is applicable:

> "Appellant is the innocent bystander, a victim of this unabated conflict. Appellant has no dispute with its employees. The wage scales in force apparently were satisfactory to employer and employee alike. The working conditions brought no discontent. The employees were desirous of working for appellant. With them the appellant wish to operate its mine. This has been prevented by the struggle between the two unions over who should represent the employees." • • • "Do the facts present a case 'growing out of a labor dispute' or which is 'involved in a labor dispute,' as those two phrases are used in the Act?
>
> "Looking to the purpose, as well as to the words, of the Act, we are satisfied that the term 'labor dispute' should be more broadly and liberally construed. The term 'labor disputes' comprehends disputes growing out of labor relations. It infers employment—implies the existence of the relation of employer and employee. Disputes between these parties are the general subject matter of this legislation. All such disputes seem to be clearly included.
>
> "Equally clear we think must be the conclusion that the dispute referred to in the statute must be one between the employer and the employee or growing directly out of their relationship. It does not apply to disputes between employees or to disputes between employee unions to which the employer is not a party. The employer is not precluded from invoking the jurisdiction of a Federal Court of equity unless it appears

that in some way it was a party to the dispute, between two unions."

And in *Keith Theatre* v. *Vachon,* decided in 1936 by the Supreme Court of Maine, 187 A. 692, it was held:

> "Social welfare does not demand that nonrelated persons or organizations shall have the right, even by peaceable picketing, to attempt to break down and destroy a satisfactory relationship between an employer and its employees in order to supplant it by another whose terms are satisfactory only to the dictators of it."

Law and Cases Cited by Petitioners Not Applicable to Instant Case.

An examination of cases cited by the petitioners herein in their brief clearly shows that a recognized labor union or unions or individual members thereof were involved and directly interested as parties to the causes, except in one case. No such facts exist in the case under review. No labor dispute exists between employer and employee or any union or even between the respondent and persons engaged in the same or competitive business.

The respondent had no pending dispute with any of its employees or any labor organization at the time of the institution of the suit under review herein. Respondent employs large numbers of negroes and it had no dispute with any of them. In view of the numerous statements made in petitioners' brief, such as page after page of tables and data relating to "Negro and Relief" and quotations from law reviews on current events, it would seem pertinent to observe that respondent herein now employs only persons who are members of recognized labor unions.

The sole case cited by petitioners which does not involve a labor dispute is that of the *Julie Baking Company* v. *Graymond,* 274 N. Y. Supp. 250, which was decided August 16, 1934, prior to the decision in the case of *Beck-Hazard*

Shoe Corp. v. *Johnson, supra,* by the same Court, and appears in the same volume of reports.

An examination of the *Julie Baking Company* opinion involved an uprising in the neighborhood caused by what was believed to be an exorbitant price fixed for bread. It in no sense involved a racial dispute and was in fact overruled by the *Beck case.*

The petitioners in their brief have quoted from *The Labor Injunction* (Frankfurter & Greene). There is not one statement therein which in any wise could be construed to support the contention of the petitioners that the rules applicable to labor disputes also apply to disputes which are racial in character.

A reading of the committee and conference reports of the Senate and House of Representatives of the United States discloses that the Congress intended the Labor Disputes Act to apply to labor and labor organizations only.

The Courts Below Did Not Err in Granting and Affirming the Injunction Against Picketing and Boycotting

Counsel for petitioners in their brief, on pages 5 and 11, emphasize the fact that they had a single person picketing on one day, but they ignore the fact that in their answer (R. p. 14) the "defendants admit that the defendant corporation has heretofore and prior to the acts herein complained of, picketed or expressed the intention of picketing two other stores of the plaintiff."

It will be further noted by the record (page 6) the respondent charged in its Complaint that there appeared in the Washington Tribune, a newspaper published in the District of Columbia for negroes, under date of April 7, 1936, an article which the defendants caused or permitted to be published, which read in part:

> "Pickets were stationed in front of the chain store branch in 1900 block of Eleventh Street, Northwest,

Wednesday afternoon, bearing signs reading 'Will Negroes Work Here?' The store opened to the public on Saturday. *A total of fifteen persons, including several prominent women, picketed during the first three days of the campaign.* On Saturday, the signs carried by the pickets read 'Buy Where You Can Work—No Negroes Employed in This Store—Stay Out Until Negro Clerks Are Hired.' It was reported that a 'comparative few thoughtless persons' made purchases at the new chain store.

"Because all of the active members of the New Negro Alliance or persons interested in the cause are employed during the day, it was decided that early evening canvassing of neighborhoods—with stores under ban would continue. Pickets would be placed in front of branches of the Sanitary chain on Saturdays, when the buying at the stores is calculated as being at peak." (Record, p. 7.) (Italics ours.)

The petitioners herein in their answer to the Bill of Complaint (R. 15) made *no denial of the truth of these statements* appearing in said Washington Tribune, their answer being "none of the defendants is connected with or exercises any control over the Washington Tribune or has caused or permitted the Washington Tribune to publish any article or articles whatsoever or in any wise acted in concert with the Washington Tribune in said publications."

It is clear from the aforegoing that there was a determined combination between the petitioners that they intended to further continue the picketing of the respondent's stores regardless of whether disorder or destruction of property might occur. Respondent's Bill of Complaint charged that: "The said defendants, their pickets or patrols or some of them have jostled and collided with persons in front of the said store and have physically hindered, obstructed, interfered with, delayed, molested, and harassed persons desiring to enter the place of business of the plaintiff corporation; said pickets, or some of them, have attempted to dissuade and prevent persons from entering

plaintiff's place of business; said defendants, their pickets or patrols are disorderely while picketing or patrolling, and attract crowds to gather in front of said store, and encourage the crowds or members thereof to become disorderly, and to harass, and otherwise annoy, interfere with and attempt to dissuade, and to prevent persons from entering the place of business of the plaintiff, the disorder thereby preventing the proper conduct of and operation of the plaintiff's business." (Record, p. 3.)

The petitioners in their answer to the Bill of Complaint *"admit that the relation of employer and employees does not exist between plaintiff and any of them and that the defendants are not engaged in competitive business with plaintiff."*

It is respectfully contended that nowhere does it affirmatively appear in the records of this cause that the petitioner corporation is in any wise or in any sense a labor organization nor can it in any way rightfully claim to have any standing under the Norris-LaGuardia Labor Disputes Act, nor has it any possible justification in picketing, boycotting or causing the restruction of respondent's business. The decree granting an injunction in no sense requires the petitioners or anyone else to deal with the respondent's stores, but merely prohibits them from taking any affirmative threatening action.

Petitioners, Having Admitted the Act of Picketing the Stores of the Respondent, Were Properly Enjoined by the Trial Court

The petitioners, who conducted the picket and boycott of respondent's store, were not employees or representatives of employees or discharged employees, and, while their motives may have been good, their actions could but cause racial strife, with resultant violence, as "Violence in racial disputes is, as a matter of common knowledge, highly probable" (Record, p. 35; separate opinion of Mr. Justice

Stephens of the United States Court of Appeals for the District of Columbia, dissenting in part, but concurring in the affirmance of the injunction granted herein by the trial court).

The record shows that "Said defendants, their pickets or patrols or some of them have jostled and collided with persons in front of the said store and have physically hindered, obstructed, interfered with, delayed, molested, and harassed persons desiring to enter the place of business of the plaintiff corporation; said pickets, or some of them, have attempted to dissuade and prevent persons from entering plaintiff's place of business;" (Record, p. 4).

> "There is and can be no such thing as peaceful picketing, any more than there can be chaste vulgarity, or peaceful mobbing, or lawful lynching" (*Jonas Glass Co.* v. *Glass Bottle Blowers' Asso.*, 72 N. J. Eq. 653).

And in the case of *Pierce* v. *Stablemen's Union*, 165 Cal. 70, it was said at page 79:

> "A picket, in its very nature, tends to accomplish, and is designed to accomplish, these very things. It tends and is designed by physical intimidation to deter other men from seeking employment in the places vacated by strikers. It tends and is designed to drive business away from the boycotted place, not by legitimate methods of persuasion, but by the illegitimate means of physical intimidation and fear. Crowds naturally collect, disturbances of the peace are always imminent and of frequent occurrence. Many peaceful citizens, men and women, are always deterred by physical trepidation from entering places of business so under a boycott patrol. It is idle to split hairs upon so plain a proposition, and to say that the picket may consist of nothing more than a single individual peacefully endeavoring by persuasion to prevent customers from entering the boycotted place. The plain facts are always at variance with such refinements of reason."

Petitioners have cited in their brief the case of *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184. It will be noted that said case, decided by Mr. Chief Justice Taft, involved a *labor dispute* in which plaintiff operated "an open shop, did not recognize organized labor and would not deal with the committee," and yet, even in that case, so involving a labor dispute, the Chief Justice said "the name 'picket' indicated a militant purpose inconsistent with peaceable persuasion."

It will be further noted that the observer permitted in the *American Steel Foundries case* was for the purpose of inducing employees to leave their employment, while in the cause at bar *the picket is directed solely at the ruination of respondent's business.*

In a well reasoned opinion in *Elkind and Sons, Inc., et al.*, v. *Retail Clerks International Protective Association et al.*, 169 Atl. 494, a New Jersey Chancery decision, decided December 6, 1933, the Court said in part:

> "The defendants sought to hide their real purpose behind the pretense that they were seeking to advance the interests of the employees; but this was a service unsought and unasked for by them. It may have been acquiesced in by some, but it was forced upon most of them. The strike agitators were mere volunteers. They sought mainly to advance their own personal interests by demonstrating to their superiors their usefulness in inciting strikes, and their ability to enforce their demands. They assumed the role of those aptly characterized by Vice-Chancellor Fallon in *Bayonne Textile Corp. v. American Federation of Silk Workers et al.*, 114 N. J. Eq. 307, 168 Atl. 799, 803, as 'intermeddlers'. * * *"

The same opinion quotes from the case of *Truax* v. *Corrigan*, 257 U. S. 312:

> "We held that under these clauses picketing was unlawful and that it might be enjoined as such, and that peaceful picketing was a contradiction in terms."

The opinion in the *Elkind case* further states:

> "Picketing is a militant word and the act of picketing is militant in both character and purpose. Its purpose, compulsion or coercion, is accomplished only by intimidation. * * *"

> "Picketing in its mildest form is said to be a nuisance. And a private nuisance, regardless of its intimidating character or effect, will be enjoined," citing *Jonas Glass Co.* v. *Glass Bottle Blowers' Asso., supra.*

The question of picketing was very fully discussed in the case of *Beck* v. *Teamsters' Protective Union,* 118 Michigan 520, in which the Court said in part:

> "To picket complainant's premises in order to intercept their teamsters or persons going there to trade is unlawful. It itself is an act of intimidation, and an unwarrantable interference with the right of free trade. The highways and public streets must be free for all for the purpose of trade, commerce, and labor. The law protects the buyer, the seller, the merchant, the manufacturer, and the laborer in the right to walk the streets unmolested. It is no respecter of persons, and it makes no difference, in effect, whether the picketing is done 10 or 1000 feet away.
>
> "It will not do to say that these pickets are thrown out for the purpose of peaceable argument and persuasion. They intended to intimidate and coerce. * * *"

The proposition is well established that a combination looking towards the domination or ruination of the business of another by fraud, violence or coercion is fundamentally unlawful.

> *Waitresses Union, Local No. 249, et al.,* v. *Benish Restaurant Company, Inc.,* 6 F. (2d) 568.
>
> *Kinloch Telephone Company* v. *Local Union No. 2,* 275 Fed. 241.
>
> *Quinlivan, et al.,* v. *Dail-Overland Company, et al.,* 274 Fed. 56.

Petitioners have cited the case of *American Federation of Labor* v. *Buck's Stove and Range Co.*, 33 App. D. C. 83, and in their very language support the position taken by the respondent, that injunction lies against interference with business in cases in which there is violence or the *coercion or intimidation of customers.*

The case of *King et al.* v. *Weiss Company*, 266 Fed. 257, is further authority to sustain the decision below. In the *King case white* workers in a plant struck and acts of intimidation which prevented *colored* employees from working were restrained, although such acts would not necessarily have prevented white workers from continuing in employment; the case being one of intimidation, and the timid being entitled to protection against unlawful threats and intimidation, even though the acts would not be sufficient to affect bolder persons.

CONCLUSION

Counsel for respondent submit: there is no labor dispute involved herein as comprehended by the Norris-LaGuardia Act; this Court has never condoned picketing except in a bona fide labor dispute and no such dispute exists in this cause; that permitting petitioners herein to engage in unlimited picketing would establish a precedent the effect of which could completely disrupt the business and activities of the entire community, as "if petitioners are upheld in picketing in this case, they might picket any private residence which employed white rather than negro servants. The illustration indicates the extreme to which the contention of the petitioners, if upheld, might be carried" (R. p. 27); this is solely a racial dispute and the issuance of the injunction granted herein should be upheld and affirmed.

Respectfully submitted,

A. Coulter Wells,
William E. Carey, Jr.,
Counsel for Respondent.

p. 5,

SUPREME COURT OF THE UNITED STATES.

No. 511.—October Term, 1937.

The New Negro Alliance, et al., Petitioners, vs. Sanitary Grocery Co., Inc.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[March 28, 1938.]

Mr. Justice Roberts delivered the opinion of the Court.

The matter in controversy is whether the case made by the pleadings involves or grows out of a labor dispute within the meaning of Section 13 of the Norris-LaGuardia Act.[1]

The respondent, by bill filed in the District Court of the District of Columbia, sought an injunction restraining the petitioners and their agents from picketing its stores and engaging in other activities injurious to its business. The petitioners answered, the cause was heard upon bill and answer, and an injunction was awarded. The United States Court of Appeals for the District of Columbia affirmed the decree.[2] The importance of the question presented and asserted conflict with the decisions of this and other federal courts moved us to grant certiorari.

As the case was heard upon the bill and a verified answer the facts upon which decision must rest are those set forth in the bill and admitted or not denied by the answer and those affirmatively set up in the answer.

The following facts alleged in the bill are admitted by the answer. Respondent, a Delaware corporation, operates 255 retail grocery, meat, and vegetable stores, a warehouse and a bakery in the District of Columbia and employs both white and colored persons. April 3, 1936, it opened a new store at 1936 Eleventh Street, N. W., installing personnel having an acquaintance with the trade in the vicinity. Petitioner, The New Negro Alliance, is a corporation composed of colored persons, organized for the mutual improvement of its members and the promotion of civic, educational, benevolent, and charitable enterprises. The individual petitioners are officers of the corporation. The relation of employer and employes

[1] Act of March 23, 1932, c. 90, 47 Stat. 70, 73, U. S. C. Tit. 29, § 113.
[2] 93 F. (2d) 510, 65 W. L. R. 874.

does not exist between the respondent and the petitioners or any of them. The petitioners are not engaged in any business competitive with that of the respondent, and the officers, members, or representatives of the Alliance are not engaged in the same business or occupation as the respondent or its employes.

As to other matters of fact, the state of the pleadings may be briefly summarized. The bill asserts: the petitioners have made arbitrary and summary demands upon the respondent that it engage and employ colored persons in managerial and sales positions in the new store and in various other stores; it is essential to the conduct of the business that respondent employ experienced persons in its stores and compliance with the arbitrary demands of defendants would involve the discharge of white employes and their replacement with colored; it is imperative that respondent be free in the selection and control of persons employed by it without interference by the petitioners or others; petitioners have written respondent letters threatening boycott and ruination of its business and notices that by means of announcements, meetings and advertising the petitioners will circulate statements that respondent is unfair to colored people and to the colored race and, contrary to fact, that respondent does not employ colored persons; respondent has not acceded to these demands. The answer admits the respondent has not acceded to the petitioners' demands, but denies the other allegations and states that the Alliance and its agents have requested only that respondent, in the regular course of personnel changes in its retail stores, give employment to negroes as clerks, particularly in stores patronized largely by colored people; that the petitioners have not requested the discharge of white employes nor sought action which would involve their discharge. It denies the making of the threats described and alleges the only representations threatened by the Alliance or its authorized agents are true representations that named stores of the respondent do not employ negroes as sales persons and that the petitioners have threatened no more than the use of lawful and peaceable persuasion of members of the community to withhold patronage from particular stores after the respondent's refusal to acknowledge petitioner's requests that it adopt a policy of employing negro clerks in such stores in the regular course of personnel changes.

The bill further alleges that the petitioners and their authorized representatives "have unlawfully conspired with each other

to picket, patrol, boycott, and ruin the Plaintiff's business in said stores, and particularly in the store located at 1936 Eleventh Street, Northwest" and, "in an effort to fulfill their threats of coercion and intimidation, actually have caused the said store to be picketed or patrolled during hours of business of the plaintiff, by their members, representatives, officers, agents, servants, and employees;" the pickets carrying large placards charging respondent with being unfair to negroes and reading: "Do your Part! Buy Where You Can Work! No Negroes Employed Here!" for the purpose of intimidating and coercing prospective customers from entering the respondent's store until the respondent accedes to the petitioners' demands. "Said defendants, their pickets or patrols or some of them have jostled and collided with persons in front of the said store and have physically hindered, obstructed, interfered with, delayed, molested, and harassed persons desiring to enter the place of business of the Plaintiff Corporation; said pickets, or some of them, have attempted to dissuade and prevent persons from entering plaintiff's place of business; said defendants, their pickets or patrols are disorderly while picketing or patrolling, and attract crowds to gather in front of said store, and encourage the crowds or members thereof to become disorderly, and to harass, and otherwise annoy, interfere with and attempt to dissuade, and to prevent persons from entering the place of business of the plaintiff, the disorder thereby preventing the proper conduct of and operation of the plaintiff's business. Defendants have threatened to use similar tactics of picketing and patrolling as aforesaid in front of the several other stores of the plaintiff." Four photographs alleged to portray the picketing are annexed as exhibits to the bill. One of them shows a man carrying a sandwich placard on the sidewalk and no one else within the range of the camera. In another two children are seen beside the picket; in another two adults; in the fourth one adult entering respondent's store at a distance from the picket and without apparent interference. The answer denies all these allegations save that it admits the petitioners did, during April 4, 1936, and at no other time, cause the store at 1936 Eleventh Street, N. W. to be continuously picketed by a single person carrying a placard exhibiting the words quoted by the bill; and the petitioners, prior to the acts complained of in the bill, picketed, or expressed the intention of picketing, two other stores. It admits that the photographs correctly represent

the picketing of April 4, 1936. The answer avers the information carried on the placards was true, was not intended to, and did not in fact, intimidate customers; there was no physical obstruction, interference or harassment of anyone desiring to enter the store; there was no disorderly conduct, and the picketing did not cause or encourage crowds to gather in front of the store.

The bill states: "As evidence of the widespread and concerted action planned by the Defendants herein, they have caused to be placed or have permitted to appear in the Washington Tribune . . . the following statements . . ." There follow quotations from articles appearing in the newspaper purporting to report meetings of the Alliance and speeches made thereat. There is no statement that the facts reported in the articles are true. The answer denies that any of the petitioners is connected with or exercises any control over the Washington Tribune or caused or permitted that newspaper to publish any article or news item whatsoever or in any way acted in concert with the newspaper in those publications.

The bill asserts that petitioners and their representatives, officers, and agents, unlawfully conspired to picket, boycott, and ruin the respondent's business in its stores, particularly the store at 1936 Eleventh Street. This is denied by the answer.

The bill says that the described conduct of petitioners will continue until respondent complies with petitioners' demands; is and will continue to be dangerous to the life and health of persons on the highway, to property thereon, and to respondent's employes, its property, and business and will cause respondent irreparable injury; the petitioners' acts are unlawful, constitute a conspiracy in restraint of trade, and, if continued, will ruin the respondent's business. The answer denies these allegations so far as they constitute assertions of fact.

The case, then, as it stood for judgment, was this: The petitioners requested the respondent to adopt a policy of employing negro clerks in certain of its stores in the course of personnel changes; the respondent ignored the request and the petitioners caused one person to patrol in front of one of the respondent's stores on one day carrying a placard which said: "Do Your Part! Buy Where You Can Work! No Negroes Employed Here!" and caused or threatened a similar patrol of two other stores of respondent. The information borne by the placard was true. The patrolling did not coerce or intimidate respondent's customers; did not physically obstruct, interfere with, or harass persons desiring to

No. 511. The New Negro Alliance et al., petitioners, *v.* Sanitary Grocery Co., Inc. It is ordered that the opinion in this cause be amended (1) by striking out the last three sentences in the first full paragraph on page 5 and substituting therefor the following: "The Court of Appeals thought that the dispute was not a labor dispute within the Norris-LaGuardia Act because it did not involve terms and conditions of employment such as wages, hours, unionization or betterment of working conditions, and that the trial court, therefore, had jurisdiction to issue the injunction. We think the conclusion that the dispute was not a labor dispute within the meaning of the Act, because it did not involve terms and conditions of employment in the sense of wages, hours, unionization or betterment of working conditions is erroneous.";

(2) By striking out of the second full paragraph on page 6 the first and second sentences and so much of the third sentence as reads: "In the first place" and starting a new sentence with a capital "T";

(3) By striking out the words "In the second place" in the fourth sentence in the second full paragraph on page 6 and beginning the sentence with a capital "T".

CORRECTION

enter the store, the picket acted in an orderly manner, and his conduct did not cause crowds to gather in front of the store.

The trial judge was of the view that the laws relating to labor disputes had no application to the case. He entered a decree enjoining the petitioners and their agents and employes from picketing or patrolling any of the respondent's stores, boycotting or urging others to boycott respondent; restraining them, whether by inducements, threats, intimidation or actual or threatened physical force from hindering any person entering respondent's places of business, from destroying or damaging or threatening to destroy or damage respondent's property and from aiding or abetting others in doing any of the prohibited things. In affirming this decree the majority of the Court of Appeals held that the case did not involve or grow out of a labor dispute within the meaning of the Norris-La Guardia Act. One member of the court thought that though the dispute involved terms and conditions of employment in respondent's business it was not within the Act because essentially a racial dispute. We hold that the Act applies and the trial court erred in ignoring its provisions regulating and limiting the exercise of the court's jurisdiction.

Subsection (a) of Section 13 provides: "A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; . . . or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined)." Subsection (b) characterizes a person or association as participating or interested in a labor dispute "if relief is sought against him or it and if he or it . . . has a direct or indirect interest therein, . . ." Subsection (c) defines the term "labor dispute" as including "any controversy concerning terms or conditions of employment, . . . regardless of whether or not the disputants stand in the proximate relation of employer and employe." These definitions plainly embrace the controversy which gave rise to the instant suit and classify it as one arising out of a dispute defined as a labor dispute. They leave no doubt that The New Negro Alliance and the individual petitioners are, in contemplation of the Act, persons interested in the dispute.[8]

[8] Compare Senn v. Tile Layers Union, 301 U. S. 468; Lauf v. Shinner & Co., No. 293, Oct. T. 1937.

In quoting the clauses of Section 13 we have omitted those that deal with disputes between employers and employes and disputes between associations of persons engaged in a particular trade or craft, and employers in the same industry. It is to be noted, however, that the inclusion in the definitions of such disputes, and the persons interested in them, serves to emphasize the fact that the quoted portions were intended to embrace controversies other than those between employers and employes; between labor unions seeking to represent employes and employers; and between persons seeking employment and employers.

Thus the nature of the dispute and the interest of the parties therein bring the case squarely within the Act unless, as suggested by the District Court and by one of the justices of the Court of Appeals, the case is taken out of the scope of the Act by the fact that the dispute is "racial". We think this cannot be so. In the first place, the Act does not concern itself with the background or the motives of the dispute. In the second place, the desire for fair and equitable conditions of employment on the part of persons of any race, color, or persuasion, and the removal of discriminations against them by reason of their race or religious beliefs is quite as important to those concerned as fairness and equity in terms and conditions of employment can be to trade or craft unions or any form of labor organization or association. Race discrimination by an employer may reasonably be deemed more unfair and less excusable than discrimination against workers on the ground of union affiliation. There is no justification in the apparent purposes or the express terms of the Act for limiting its definition of labor disputes and cases arising therefrom by excluding those which arise with respect to discrimination in terms and conditions of employment based upon differences of race or color.

The purpose and policy of the Act respecting the jurisdiction of the federal courts is set forth in Sections 4 and 7. The former deprives those courts of jurisdiction to issue an injunction against, *inter alia*, giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence; against assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute; against advising or notifying any person of an intention to do any of the acts speci-

fied; against agreeing with other persons to do any of the acts specified.[4] Section 7 deprives the courts of jurisdiction to issue an injunction in any case involving or growing out of a labor dispute, except after hearing sworn testimony in open court in support of the allegations of the complaint, and upon findings of fact to the effect (a) that unlawful acts have been threatened and will be committed unless restrained, or have been committed and will be continued, unless restrained, and then only against the person or persons, association or organization making the threat or permitting the unlawful act or authorizing or ratifying it; (b) that substantial and irreparable injury to complainant's property will follow; (c) that, as to each item of relief granted, greater injury will be inflicted upon the complainant by denial of the relief than will be inflicted on the defendant by granting it; (d) that complainant has no adequate remedy at law, and (e) that the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.[5]

The legislative history of the Act demonstrates that it was the purpose of the Congress further to extend the prohibitions of the Clayton Act[6] respecting the exercise of jurisdiction by federal courts and to obviate the results of the judicial construction of that Act.[7] It was intended that peaceful and orderly dissemination of information by those defined as persons interested in a labor dispute concerning "terms and conditions of employment" in an industry or a plant or a place of business should be lawful; that, short of fraud, breach of the peace, violence, or conduct otherwise unlawful, those having a direct or indirect interest in such terms and conditions of employment should be at liberty to advertise and disseminate facts and information with respect to terms and conditions of employment, and peacefully to persuade others to concur in their views respecting an employer's practices.[8] The District Court erred in not complying with the provisions of the Act.

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[4] U. S. C. Tit. 29, § 104.

[5] U. S. C. Tit. 29, § 107.

[6] Act of Oct. 15, 1914, c. 323, § 20, 38 Stat. 730, 738, U. S. C. Tit. 29, § 52.

[7] Duplex Printing Press Co. v. Deering, 254 U. S. 443; American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184. Compare House Report No. 669, 72nd Cong., 1st Sess. and Senate Report 1060, 71st Cong., 2nd Sess. and Senate Report 163, 72nd Cong., 1st Sess.

[8] Compare Senn v. Tile Layers Union, 301 U. S. 468; Levering and Garrigues Co. v. Morrin, 71 F. (2d) 284; Cinderella Theatre Co. v. Sign Writers Local, 6 F. Supp. 164; Miller Furniture Co. v. Furniture Workers Union, 8 F. Supp. 209.

The decree must be reversed and the cause remanded to the District Court for further proceedings in conformity with this opinion.

So ordered.

Mr. Justice CARDOZO took no part in the consideration or decision of this case.

Mr. Justice MCREYNOLDS, dissenting.

Mr. Justice BUTLER and I cannot accept the view that a "labor dispute" emerges whenever an employer fails to respond to a communication from A, B and C—irrespective of their race, character, reputation, fitness, previous or present employment—suggesting displeasure because of his choice of employes and their expectation that in the future he will not fail to select men of their complexion.

It seems unbelievable that, in all such circumstances, Congress intended to inhibit courts from extending protection long guaranteed by law and thus, in effect, encourage mobbish interference with the individual's liberty of action. Under the tortured meaning now attributed to the words "labor dispute", no employer—merchant, manufacturer, builder, cobbler, housekeeper or what-not—who prefers helpers of one color or class can find adequate safeguard against intolerable violations of his freedom if members of some other class, religion, race or color demand that he give them precedence.

Design thus to promote strife, encourage trespass and stimulate intimidation, ought not to be admitted where, as here, not plainly avowed. The ultimate result of the view now approved to the very people whom present petitioners claim to represent, it may be, is prefigured by the grievous plight of minorities in lands where the law has become a mere political instrument.

See—definition of Dispute, Webster's New International Dictionary; 29 U. S. C. A. § 113(c); Senate Report No. 163, 72nd Congress, 1st Session, pp. 7, 11, 25; House Report No. 669, 72nd Congress, 1st Session, pp. 3, 7, 8, 10, 11.